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|-----------------|-------------|---|------------------------------|------------------------|
| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR  | ATTORNEY DOCKET NO.          | CONFIRMATION NO.       |
| 09/752,712      | 12/28/2000  | James E. Parker   | VTECH-48514                  | 9398                   |
| 7590            | 02/14/2008  | I. Morley Drucker<br>FULWIDER PATTON LEE & UTECHT, LLP<br>6060 Center Drive, Tenth Floor<br>Los Angeles, CA 90045 | EXAMINER<br>SIEFKE, SAMUEL P |                        |
|                 |             |   | ART UNIT<br>1797             | PAPER NUMBER<br>PAPER  |
|                 |             |   | MAIL DATE<br>02/14/2008      | DELIVERY MODE<br>PAPER |

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* JAMES E. PARKER

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Appeal 2008-1195  
Application 09/752,712  
Technology Center 1700

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Decided: February 14, 2008

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Before BRADLEY R. GARRIS, CHUNG K. PAK, and PETER F. KRATZ,  
*Administrative Patent Judges.*

GARRIS, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 15, 16, 18, 20, 21, and 23. We have jurisdiction under 35 U.S.C. § 6.

We REVERSE.

Appellant claims an assaying apparatus for collecting and analyzing a liquid sample. The apparatus 60 comprises a container 62, a cap 68, an

assay strip 70, a wick mounted to the cap and extending into the liquid sample space of the interior sample chamber of the container, and an annular bridging wick piece 80 connected between the wick and the assay strip for conducting the liquid sample from the wick to the assay strip (claim 15; Figs. 4-5).

Representative claim 15 reads as follows:

15. Assaying apparatus for collecting and analyzing a liquid sample for an analyte in the liquid sample, the apparatus comprising:

a container having an interior sample chamber with a liquid sample space, said container having a surface defining an opening in communication with said interior sample chamber;

a cap adapted to be placed on said container opening for closing said container opening and sealing said container;

an assay strip disposed in said cap, said assay strip having an assay region disposed in said cap for indicating the presence or absence of an analyte in a liquid sample placed in said liquid sample space of said interior chamber, and said cap including a separator member disposed between said assay strip and said interior sample chamber for separating said liquid sample space from said assay region of said assay strip;

a wick mounted to said cap and extending into said liquid sample space of said interior sample chamber when said cap is placed on said container, said wick being in fluid communication with said assay strip for conducting a portion of the liquid sample from said interior chamber to said assay region of said assay strip; and

an annular bridging wick piece connected between said wick and said assay strip in fluid communication with said wick and said assay strip and in

immediate contact with said assay strip for conducting the liquid sample from said wick to said assay strip.

The references set forth below are relied upon by the Examiner as evidence of obviousness:

|          |              |               |
|----------|--------------|---------------|
| Sayles   | 5,501,837    | Mar. 26, 1996 |
| Forsberg | 6,168,758 B1 | Jan. 2, 2001  |
| Wong     | 6,627,152 B1 | Sep. 30, 2003 |

All of the claims on appeal are rejected under 35 U.S.C. § 103(a) as being unpatentable over Wong in view of Forsberg and Sayles.

According to the Examiner, "[i]t would have been obvious to one having ordinary skill in the art to modify Wong in view of Forsberg and Sayles to provide an 'annular' bridging wick between the main wick and test strips to aid in drawing fluid from the wicks 3 [sic] by capillary action and supplying the test strips 5 [sic] with a sample fluid" (Ans. 6).

We cannot sustain this rejection.

The deficiency of the Examiner's obviousness conclusion is that an annular bridging wick piece would be unnecessary and unworkable in the context of the assaying apparatus of Wong. This is so for a number of reasons.

First, the Wong apparatus has no need for any type of bridging wick piece because liquid sample is carried by receptacle 52 directly to downwardly extending end portions 122 of test strips 120 (Figs. 4-8; col. 4, l. 52 – col. 5, l. 20). Second, while wicks having an annular shape are

shown by Forsberg (e.g., perimeter wick 6 in Fig. 2) and Sayles (absorbent pad 38 in Fig. 1), these annular shapes are occasioned by the radially extending test strips of Forsberg (test strips 5 in Fig. 2) and Sayles (reagent strips 32 in Fig. 1). In contrast, Wong's test strips 120 are disposed in a linear, juxtaposed arrangement along cavities 84 (Figs. 2, 4). The Examiner has not established that a bridging wick piece having an annular shape as shown by Forsberg and Sayles would be capable of transporting liquid sample to wicks having the linear, juxtaposed arrangement of Wong.

For these reasons, the applied references provide no suggestion or reason for combining their teachings in the manner proposed by the Examiner. We cannot sustain, therefore, the § 103 rejection of all appealed claims as being unpatentable over Wong in view of Forsberg and Sayles.

The decision of the Examiner is reversed.

REVERSED

Appeal 2008-1195  
Application 09/752,712

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